

ALABAMA PUBLIC ACCESS LAWS

(A MANUAL FOR ALABAMA PUBLIC OFFICIALS)

COMPLIMENTS OF:

THE OFFICE OF ATTORNEY GENERAL,
BILL PRYOR

and

THE ALABAMA PRESS ASSOCIATION

Revised: May 12, 2000

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ALABAMA PUBLIC ACCESS LAWS

The Alabama Press Association is the oldest trade association in the State of Alabama. Its members comprise almost every daily and weekly newspaper in the state. The Office of the Attorney General is the chief legal advisor to state government and has for years issued opinions concerning the rights of citizens to attend governmental meetings and to view governmental records. These organizations have combined their efforts to aid elected and appointed governmental officials in Alabama by answering common questions relating to access to governmental meetings and records. Because litigation is expensive for everyone, the hope is that this manual can help avoid unnecessary conflicts between the members of the press and elected officials. For that reason, the contents of this manual are similar to a manual provided each year to members of the Alabama Press Association. The contents of this manual have been derived from questions received by the Alabama Press Association Media Hotline service over the past several years and by questions submitted to the Office of the Attorney General by members of government. Hopefully, most of the questions that governmental officers face will be answered here. However, this manual is no substitute for competent legal advice applicable to your particular situation. Governmental agencies have the ability to seek advice from the Office of the Attorney General. Opinions of the Attorney General are published on the Internet at www.ago.state.al.us. The Alabama Press Association legal manual is available to members of the press association at www.alabamapress.org.

This manual contains cases/opinions current as of **February 22, 2000**.

ACCESS TO MEETINGS

- A. Alabama's Sunshine Law:** Many states have long lists of exceptions to the requirement for governmental bodies to meet in public. In Alabama, there is one statutory exception and one created by case law.

1. The Statute: ALA. CODE § 13A-14-2 provides:

- a. "No executive or secret session shall be held by any of the following named boards, commissions or courts of Alabama, namely: Alabama Public Service Commission; school commissions of Alabama; board of adjustment; state of county tax commissions; any county commission, any city commission or municipal council; or any other body, board or commission in the state charged with the duty of disbursing any funds belonging to the state, county or municipality, or board, body or commission to which is delegated any legislative or judicial function; except, that executive or secret sessions may be held by any of the above named boards or commissions when the character or good name of a woman or man is involved. (b) Any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$10.00 nor more than \$500.00."

b. "Any person who remains in attendance upon any meeting of any of the above named boards or bodies which is being held in secret or executive session shall be deemed guilty of violating the provision of this Section."

2. **Overview:** The courts have held that public access to public bodies generally extends to the entire decision-making process from discussion or debate and formulation through adoption and enforcement; otherwise public meetings could be held only to ratify decisions made in secret. *Dale v. Birmingham News Co.*, 452 So. 2d 1321 (Ala. 1984).
3. **No Secret Meetings are Ever Required:** The Sunshine Law does not require executive sessions under any circumstances. Public boards or bodies can elect to conduct public meetings even when character and good name or legal business is being discussed without violating the Sunshine Law.

B. Court interpretations of the Sunshine Law:

1. **Good name and character:** The Supreme Court of Alabama discussed the intention of this exception in its opinion in *Miglionico v. Birmingham News Company*, 378 So.2d 677 (Ala.1979). There the Supreme Court stated:

"We believe that the legislature intended by the use of the words 'character' or 'good name' to permit executive sessions whenever there is a discussion of one's general reputation, i.e., the estimate the public places on a person, his reputation, good or bad, and the personal attributes of an individual. It might also include such personal traits as honesty, loyalty, integrity, reliability, and other such characteristics, good or bad, which make up one's individual personality."

2. **Notice:** In *Slawson & Furman v. Alabama Forestry Commission*, 631 So. 2d 953 (Ala. 1994), a unanimous court held that our Sunshine Law "requires [a public agency] to provide public notice of its special meetings.... The public must be given a reasonable opportunity to be aware of the place where the notice will be posted; and the time, date and place of the meeting must be available to the public upon reasonable inquiry. When special circumstances arise or when a meeting is called for truly emergency purposes, the agency holding the meeting should so declare and should give such notice as is reasonable under the circumstances, unless the giving of such notice is impractical or impossible."

3. **Attorney-client Meetings:** The Alabama Supreme Court in *Dunn v. Alabama State University Board of Trustees*, 628 So. 2d 519, 88 Ed. L. Rptr. 484 (Ala. 1993) recognized a limited attorney-client privilege as an exception to Alabama's Open Meeting Act: ALA. CODE § 13A-14-2(a)(1975). The court held that "discussions between a public body and its attorney concerning pending litigation are not subject to the Open Meetings Act." Also in that case the Alabama Supreme Court recognized the potential for abuse of the attorney-client privilege by public officers and limited the privilege solely to the communications by the lawyer to the public body and not to discussions in the presence of the lawyer between members of the public body about what action to take. The court specifically stated: "[O]nce any discussion, whatsoever, begins among the members of a public body regarding what action to take, based upon advice from counsel, whether it be settlement or otherwise, such discussion shall be open to the public and failure to do so shall constitute a clear violation of the Open Meetings Act." According to the Court: "The exception is limited to meetings in which discussion of present and pending litigation takes place."
4. **Definition of a Meeting:** In *Dale v. Birmingham News*, 452 So. 2d 1321 (Ala. 1984), the court said, "Under this statute all meetings of these bodies named, whether formal or informal, whether or not an official vote is taken, must be open to the public, except where the character or good name of the person is involved. The right to public access extends to the entire process from public policy discussion and formulation through adoption and enforcement. Otherwise, business could be conducted in secrecy and public meetings held only to ratify decisions already made in secret." In 1986, the Alabama Supreme Court said that the state open meetings law applies only to those governmental entities which are governed by a group of individuals who sit as a deliberative body to set policy regarding public matters. In *Advertiser Co. v. Wallis*, 493 So. 2d 1365 (Ala. 1989) the court said that the law did not apply to agencies or departments administered by a single individual.

The Attorney General has held that the Sunshine Law applies to committee meetings or subgroups of the entire governmental body. If a substantial number of the members of a committee meet, the meeting should be open to the public and certainly, if a quorum of a committee meets, the meeting must be open to the public. However, members of a public body are not prohibited from meeting socially or informally if no business of the body is conducted. Ala. Op. Atty. Gen. 96-00118 (Jan. 29, 1986).

5. **Other Sunshine Law Rulings:**

- a. Routine interviews with applicants for superintendent of education job should be open to the public. *Dale v. Birmingham News*, 452 So. 2d 1321 (Ala. 1984).

- b. The Birmingham City Council was enjoined from excluding the public from meetings held to consider appointments to the city board of education. *Miglionico v. Birmingham News*, 378 So. 2d 677 (Ala. 1979).
- c. Votes by government officials during meetings should be cast openly and not by secret ballot. In 1990, the Alabama Circuit Court for the Tenth Judicial Circuit held that where an Alabama city council that met in executive session as a "committee of the whole" and held secret ballot for election of council president and president pro tempore, and then convened a formal council meeting and unanimously elected by voice vote the same individuals chosen in the secret ballot, the city council was in violation of the Alabama sunshine law. The newspaper was held to be entitled to an order compelling disclosure of persons for whom each council member voted in the secret ballot election. In that case, the newspaper was also able to recover reasonable attorney's fees and expenses.
- d. A water authority is not required to hold a public hearing on whether to enter into a water purchase agreement. *City of Wetumpka v. Central Elmore Water Authority*, 703 So. 2d 907 (Ala. 1997).
- e. The Sunshine Act does not prohibit vote by written ballot under certain circumstances. *Ex parte Shelby Medical Center, Inc., et al.*, 564 So. 2d 63 (1990).

C. Attorney General Opinions:

- 1. Rules of Order: A public body can formulate reasonable guidelines regarding public participation at meetings. The right of the public to be present at meetings of a public body includes the right to share their views on the matters before the body within guidelines and rules promulgated by the board regarding public participation. Reasonable time, place, and manner regulations are permissible but any content-based restriction must be narrowly tailored to meet a compelling state interest. A board may not discriminate between speakers on the basis of their employment or the content of their speech. Ala. Op. Atty. Gen. 98-00074 (Jan. 13, 1998).

A public body has the right to determine whether public comments will be allowed, except in those cases where the law requires a public hearing. It is good public policy to allow citizens and taxpayers to express their views within guidelines and restrictions established by that body. Order and decorum must be maintained at public meetings. Because of time, place and manner constraints, it may not be possible to allow every citizen to express themselves on each and every issue at every meeting. A citizen does not have an unbridled right to express their views at a public meeting. Ala. Op. Atty. Gen. 98-00134 (Apr. 28, 1998).

2. **Types of Agencies Subject to Sunshine Law:** Generally, entities created by the Alabama Legislature and to whom legislative powers are delegated or who disburse public funds are covered. For example, public corporations which may exercise eminent domain and can possess and distribute county and municipal funds would be a board subject to the Sunshine Law. Ala. Op. Atty. Gen. 98-00088 (Feb. 6, 1998)(State Products Mart Authority of Morgan County). All meetings of a board of equalization are subject to the sunshine law and should be open to the public. 204 Ala. Op. Atty. Gen. 30 (Sept. 29, 1986).

The meetings of a city solid waste authority, which acts as a deliberative body to set policy regarding the treatment and disposal of solid waste, are subject to the sunshine law. 212 Ala. Op. Atty. Gen. 50 (Sept. 22, 1988).

A county hospital board created pursuant to Chapter 21 of Title 22 of the 1975 Code of Alabama is subject to the Sunshine Law. Ala. Op. Atty. Gen. (97-00107 (Feb. 12, 1997).

A board of equalization may not conduct a closed meeting at which it considers the valuation of a taxpayer's property. 215 Ala. Op. Atty. Gen. 39 (June 14, 1989).

The sunshine law applies to legislative committee meetings as well as to meetings of the entire governmental body. Thus, a legislative committee may not meet in private, even to consult with its staff or advisors. 224 Ala. Op. Atty. Gen. 38 (Aug. 22, 1991).

The sunshine law applies to meetings of committees of a city council; thus, all such meetings must be open to the public. 227 Ala. Op. Atty. Gen. 38 (May 15, 1992).

Disciplinary action hearings of the Home Builders Licensure Board are open to the public. Ala. Op. Atty. Gen. 97-00244 (Jul. 31, 1997).

Courthouse security committees are not subject to the sunshine law because they do not have delegated legislative powers nor do they disburse public funds. Ala. Op. Atty. Gen. 99-00023 (Oct. 22, 1998).

3. **Who May Attend Closed Meetings:** All persons, whether belonging to the media or not, are excluded from executive sessions involving the discussion of a person's character under the sunshine law. A person whose good name or character is being discussed in such a session does not have a right to be present at the session unless such discussion involves a constitutionally protected property interest. 213 Ala. Op. Atty. Gen. 25 (Oct. 6, 1988).

An assistant superintendent of education may only sit in on an executive session of a school board meeting if his or her presence is required in order to provide due process, or if the board requires the assistant's presence in an official capacity. Ala. Op. Atty. Gen. 99-00247 (Jul. 15, 1999).

4. **Minutes:** Complete and accurate minutes must be kept of meetings of county hospital boards, city councils and county commissions. Said minutes shall include motions made and seconded, by whom, as well as the number of votes for and against matters put to a vote. Such minutes shall further include information reflecting how each individual member voted. 217 Ala. Op. Atty. Gen. 26 (Nov. 16, 1989). However, minutes should not be taken at portions of meetings which are held in executive session and which are not subject to public disclosure under the Sunshine Law. Ala. Op. Atty. Gen. 97-0013 (Oct. 15, 1996). The Department of Archives and History is currently working on recommended guidelines it will recommend to the State Records Commission and the Local Records Commission for minimum standards for official minutes.
5. **What Constitutes a Meeting:** All meetings of a school board, including meetings of the board with its attorney, must be open to the public except where the character of an individual is discussed. Informal gatherings of board in superintendent's office before meetings is not a violation of the sunshine law if no business of the board is conducted in any way. 208 Ala. Op. Atty. Gen. 21 (Aug. 6, 1987).

Informal meetings of a board of education are open to the public. 174 Ala. Op. Atty. Gen. 41 (March 27, 1979).

Governing bodies may not meet in private to discuss a meeting agenda before the meeting. 224 Ala. Op. Atty. Gen. 38 (Aug. 22, 1991).
6. **Polling:** A county school board's practice of taking votes by mail between meetings violates the state open meetings law. 180 Ala. Op. Atty. Gen. 35 (Sept. 12, 1980). All voting must be public and cannot be conducted by mail. 180 Ala. Op. Atty. Gen. 35 (Sept. 12, 1980). Presumably, electronic polling (telephone, fax or e-mail) would also be prohibited. However, an electronic, on-line hookup with open audio and video connections may comply — although the office of Attorney General has yet to consider such a system.
7. **Notice:** The Birmingham City Council may vary times and places of meetings provided that the time and place are fixed by the council and the public given adequate notice. 173 Ala. Op. Atty. Gen. 15 (Nov. 2, 1978).
8. **Good Name and Character:** The purpose of the good name and character exception is to protect the privacy of the person being discussed. Ala. Op. Atty. Gen. 99-00247 (July 15, 1999)

9. **Students:** A board of education may close a meeting to discuss drug offenses of individual students. Voting in such matters should be open to the public, but the identity of the students should not be disclosed. 208 Ala. Op. Atty. Gen. 21 (Aug. 6, 1987).
10. **Personnel Matters:** A county personnel board cannot hold closed meetings to discuss personnel matters in general. The board can, however, hold a closed meeting when the character or good name of an individual is involved. 205 Ala. Op. Atty. Gen. 16 (Oct. 29, 1986).

When a meeting is held by a board of education for the purpose of evaluating a superintendent of education, only those portions of a meeting which involve the character and good name of the superintendent may be held in executive session. 1994 WL 907925 (Ala. A.G. Dec. 7, 1994).

Only those portions of a grievance hearing held by a county board of education where the good name or character of a person is involved may be held in executive session and any action taken by the board must be done in an open meeting. An employee handbook cannot override the Sunshine Law. Ala. Op. Atty. Gen. 99-00111 (Feb. 17, 1999).

ACCESS TO RECORDS

A. Open Records Act: Alabama has one of the oldest open records acts in the country. It was originally passed in 1915. Alabama's basic public records inspection statute, ALA. CODE § 36-12-40, is brief and to the point:

1. **The Statute:** "Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute."
2. **Overview:** Because the statute does not define all terms used it is subject to court interpretation. In many other states, the open records statutes list detailed rules and exceptions. In Alabama, though, the state public records law says simply that unless there is a state statute that closes a public record from public view, it is open to public inspection. With a few exceptions, the courts have leaned toward the side of openness, rather than away from it and they have placed the burden of proof upon the public officer seeking to withhold production.
3. **Right to a Copy:** Another law gives certified copies the same legal standing as originals and requires public officials to provide copies on payment of fees.

ALA. CODE § 36-12-41: "Every officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of

it, on payment of the legal fees thereof, and such copy is admissible as evidence in like cases and with like effect as the original writing."

However, a public entity has no legal duty to mail a copy to a person making such a request. *Person v. Alabama Department of Forensic Sciences*, 721 So. 2d 203 (Ala. Civ. App. 1998). Whether a department elects to mail requested copies is a departmental decision.

4. Definition of a Public Record: A third state statute defines public records.

ALA. CODE § 41-13-1: "As used in this article, the term "public records" shall include all written, typed or printed books, papers, letters, documents and maps made/or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office or officer."

The Supreme Court of Alabama has said that a public writing is such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens. *Stone v. Consolidated Publishing Co.*, 404 So. 2d 678, 681 (Ala. 1981).

5. Duty to Preserve and Maintain Records: A fourth statute requires government officials to accurately maintain and preserve public records.

ALA. CODE § 36-12-2: "All public officers and servants shall correctly make and accurately keep in and for their respective offices or places of business all such books or sets of books, documents, files, papers, letters and copies of letters as at all times shall afford full and detailed information in reference to the activities or business required to be done or carried on by such officer or servant and from which the actual status and condition of such activities and business can be ascertained without extraneous information, and all of the books, documents, files, papers, letters and copies of letters so made and kept shall be carefully protected and safely preserved and guarded from mutilation, loss or destruction."

If a public official removes or disposes of government records in a way not allowed by the appropriate records commission, that action is illegal.

6. Statutory Exemptions: There are at least 42 specific exceptions to the open records act found in the Alabama Code. A public official refusing access to a

document should be able to cite a statute that exempts the document from disclosure. Some examples are:

- a. Banking records. ALA. CODE §§ 5-3A-11 & 5-5A-43.
- b. Juvenile court records. ALA. CODE § 12-15-101. Only limited group of persons have a right to inspect juvenile records and those pertaining to individuals granted youthful offender status. *Clerk of the Municipal Court of the City of Cordova v. Lynn*, 702 So. 2d 166 (Ala. Civ. App. 1997).
- c. Hospital records produced by subpoena. ALA. CODE § 12-21-6.
- d. Probation reports (unless ordered released by the court). ALA. CODE § 15-22-53.
- e. Identity of medicaid recipients. ALA. CODE § 22-6-9.
- f. Reports concerning suspected cases of certain diseases. ALA. CODE §§ 22-11A-2, 14 & 22.
- g. Tax returns and financial statements. ALA. CODE §§ 40-1-33 & 55.
- h. Federal grant program requires that certain records or parts of records be kept in confidence.

B. Interpretations of the Open Records Act:

1. **Stone v. Consolidated Publishing:** When the Anniston Star sought access to financial records of Jacksonville State University's foundation, the Alabama Supreme Court issued a ruling that some say has clouded the directness of the state's open records laws. The court in the 1981 case held that "Recorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations, and records the disclosure of which would be detrimental to the best interests of the public are some of the areas which may not be subject to public disclosure." *Stone v. Consolidated Publishing Co.*, 404 So. 2d 678 (Ala. 1981)

2. **Payroll Records:** In a 1983 opinion, the Attorney General said that payroll records of Etowah County were public records. "Citizens should have a right to know the salary and compensation of public servants if they so desire," the opinion states. The opinion goes on to state that the custodian of the records has the responsibility to set "reasonable limitations" on access so that the functions of the office will not be impaired and so that the expense to the government office will be kept to a minimum.
3. **Personnel Records:** In a 1989 decision, the Alabama Supreme Court held that under Alabama's Open Records Act, ALA. CODE § 36-12-40, applications, resumes and other related materials used by a county commission in hiring a water and sewer service coordinator could be accessed by the press. The Court held that access would be denied only if disclosure of the information would result in undue harm or embarrassment to the individual, or if public interest would clearly be affected adversely. *Chambers v. Birmingham News Company*, 552 So. 2d 854 (Ala. 1989). Public school records of individual students are not open to public inspection, but the individual students or former students do have a federally guaranteed right of access to their own records kept by the public school or public institution of higher learning. However, employees of school boards have no such federal right. The public may obtain the following information from a teachers' personnel record:
 - a. Specific salary expenditure account information.
 - b. The race and sex of the employee.
 - c. The current assignment of the employee.
 4. The rank and type of teaching certificate or endorsement a teacher holds.
 - e. The employee's employment experience record.
 - f. The employee's gross salary.
 - g. Date of hire and attainment of tenure.
 - h. Applications, disciplinary actions and memoranda of reprimand.
 1. After action by the board has been taken, recommendations of the superintendent for transfer or discipline.

Ala. Op. Atty. Gen. 96-00003 (Oct. 4, 1995). This opinion would appear to hold true for other governmental employees also.

4. **Computer Information:** Computer records are considered public records. Computer tapes concerning driver's license records are public records subject to disclosure upon payment of the "actual, reasonable cost incurred by the Department to create any new computer program required to comply with any such request by the (paper), and that (the paper) pay ...\$5.75 for each and every individual driving record identified by named driver in any such copy of the Department's databases delivered to the (paper)." *Birmingham News v. Alabama Department of Public Safety*, a decision rendered by the Circuit Court of Montgomery County July 22, 1993. However, this opinion should be carefully

reviewed in light of the passage of the Driver's Privacy Protection Act which creates federal restrictions upon access to driver's license registration records.

5. **Standardized Test Scores:** A St. Clair County circuit judge ordered the local school system to release standardized student test scores averaged by school rather than only by school district. He also ordered the state superintendent of education to release the information by school.
6. **Protection of Records:** Custodians of public records have a duty to protect the integrity of public documents and can restrict access to those who seek them only for idle curiosity. However, the news media are clearly appropriate vehicles by which citizens can learn about the activities of government. *Stone v. Consolidated Publishing Co.*, 404 So. 2d 678, 681 (Ala. 1981). *Holcombe v. State*, 200 So. 739, 744 (Ala. 1941). *Blankenship v. City of Hoover*, 590 So. 2d 245, 250 (Ala. 1991).
7. **Law Enforcement Records:** Generally, law enforcement investigative reports and materials are government records not open to public inspection. Field notes, witness statements and other investigative writings or recordings are protected from disclosure. Ala. Code § 12-21-3.1 (Supp. 1998)
 - a. **Jail Logs:** Ala. Code § 36-22-8:

"The sheriff must keep, in his office and subject to the inspection of the public during office hours, a well-bound book, to be procured at the expense of the county, in which he must enter a description of each prisoner received into the county jail, showing the name, age, sex, color and any other distinguishing marks, together with the charge for which such prisoner is held, the order and date of commitment and the order and date of release."
 - b. **Uniform Incident/Offense Reports:** In an important case upholding the right of public access to police complaint reports, a Jefferson County circuit judge ordered the City of Mountain Brook to make the reports available for inspection to reporters at reasonable times of the day, subject to the city's judgment that disclosure of certain information would "actually interfere with conduct of the efforts of respondents." (*The Birmingham News Co. v. Watkins*, No. 38389 (Cir. Ct. Jefferson Co., Ala., Oct 30, 1974).
 - c. **Autopsy reports:** Reports of autopsies performed by the State Department of Forensic Sciences are open to public inspection. ALA. CODE § 36-18-2 (1975).

C. Attorney General Opinions:

1. **Payment for copies of records:** If possible, a public agency should provide free copies of public records. However, if budgetary constraints prevent this, then a public agency may charge a nominal fee, if necessary to cover its costs for providing copies of public records. One may inspect public records without paying a fee unless a substantial amount of employee's time is required. 184 Ala. Op. Atty. Gen. 27 (Aug. 25, 1981). There is a statutory authority for the collection of fees to defray costs of providing a citizen with information retained by public officers. A "reasonable fee" may be charged. It is interpreted to mean the actual cost incurred in providing information. Such charges cannot be imposed to restrict public access. Attorney's fees incurred to review a request for documents cannot be charged. Ala. Op. Atty. Gen. 98-00161 (Jun. 12, 1998).

2. **Computer Data:** Computer records maintained in office of tax assessor constitute public records that may be supplied to citizens under reasonable conditions. 209 Ala. Op. Atty. Gen. 29 (Nov. 4, 1987).

A probate judge may enter into an agreement with a vendor to make records maintained in their office available via computer from remote locations so long as it allows similar access to anyone requesting it on the same terms. Ala. Op. Atty. Gen. 2000-076 (Feb. 2, 2000).

An agency cannot restrict access to public information merely because a person intends to use the record for personal gain. However, if a database compilation of facts is protected under copyright law, a copyright would protect the reproduction of the facts in the exact same manner as produced by the agency. Ala. Op. Atty. Gen. 98-00157 (Jun. 4, 1998).

3. **Employee Lists:** A citizen or entity is entitled to inspect a list of teachers and other personnel employed by a local school board or board of education. The BOE may charge a reasonable fee if it provides a copy of the list to the citizen or entity requesting it. The board would not be required to furnish the home addresses of its employees as a part of said list. 212 Ala. Op. Atty. Gen. 26 (Aug. 1, 1988).

Information concerning the names, titles, and compensation of county employees is a matter of public record to be made available to the public. 227 Ala. Op. Atty. Gen. 60 (June 11, 1992).

4. **Personnel Records:** The public may obtain the following information from a teachers' personnel record:

- a. Specific salary expenditure account information.
- b. The race and sex of the employee.
- c. The current assignment of the employee.
- d. The rank and type of teaching certificate or endorsement a teacher holds.

- e. The employee's employment experience record.
- f. The employee's gross salary.
- g. Date of hire and attainment of tenure.
- h. Applications, disciplinary actions and memoranda of reprimand.
- i. After action by the board has been taken, recommendations of the superintendent for transfer or discipline.

Ala. Op. Atty. Gen. 96-00003 (Oct. 4, 1995).

Individual documents reflecting the opinions of each individual board member's evaluation of the superintendent of education are not subject to disclosure. Usually, only the final draft or document, reflecting the ultimate decision, is contemplated for disclosure by the Open Records Law. Ala. Op. Atty. Gen. 96-00126 (Feb. 8, 1996).

Performance evaluations of a superintendent of education are public records and must be released unless they contain "sensitive personnel matters." It is the burden of the board to determine and support such matters are included. Ala. Op. Atty. Gen. 99-00258 (Jul. 27, 1999).

5. Applicants for Public Jobs: The names and resumes of applicants for the director of the Alabama Department of Environmental Management are matters of public record. Ala. Op. Atty. Gen. 96-00105 (Jan. 19, 1996).

Summaries of resumes from job applicants submitted to an industrial development board are "public writings" regulated under ALA. CODE § 36-12-40 (1975). 223 Ala. Op. Atty. Gen. 19 (May 17, 1991).

6. Administrative Complaints: Generally, when formal charges are filed against a citizen by a state agency charged with regulating their conduct that information is available to the public after the individual has been served with notification of the action. The official transcript of a disciplinary action hearing is a public record as well as the final decision. However, open complaint files, closed complaint files where no probable cause was found to proceed to an investigation should be kept confidential. Also, an investigative committee's recommendation to proceed with informal settlement negotiations should also be kept confidential. Ala. Op. Atty. Gen. 97-00244 (July 31, 1997)(Home Builders Licensure Board).

The State Pharmacy Board cannot delete the names of pharmacists from disciplinary records released to the public when the pharmacists are receiving treatment for an addiction as part of their discipline. The names of persons being recommended for discipline are not subject to disclosure until they are acted upon. Ala. Op. Atty. Gen. 2000-068 (Jan. 21, 2000).

7. Agencies Subject to the Open Records Law: All state, county and city agencies are subject to the open records law.

The records of a city water board are open to the public. 197 Op. Atty. Gen. 24 (1984).

The application for licensure as a nursing home administrator required by the board of examiners of nursing home administrators is a public record, thus, every citizen has a right to inspect such applications. 226 Ala. Op. Atty. Gen. 15 (Jan. 15, 1992).

Department of Corrections (prison) records are public records with certain exceptions. The work release roster showing the place of employment would be open while the psychological profile would not be public. 200 Op. Atty. Gen. 25 (1985).

8. Law Enforcement Records:

1. Uniform Incident/Offense Reports: The front of the incident offense report should always be available to the public for inspection. Ala. Op. Atty. Gen. 2000-04 (Oct. 7, 1999). Uniform Incident/Offense Reports are public records but those portions on the back of the report which contain information which would compromise criminal investigations, result in potential harm to innocent persons or infringe upon the constitutional rights of the accused may be kept confidential. Ala. Op. Atty. Gen. 97-00043 (Nov. 27, 1996).
2. Pistol Permits: Copies of pistol permits kept on file in the sheriff's office are public records. A privacy act will not be violated if another person is provided with a copy of an individual's pistol permit. A citizen may inspect and take a copy of a pistol permit issued by the sheriff to an individual. A sheriff may, at his discretion, decide to give such information over the telephone. The sheriff is not, however, required to do so over the telephone. 223 Ala. Op. Atty. Gen. 16 (Apr. 18, 1991). The Federal Privacy Act of 1974 does not apply to sheriffs. Ala. Op. Atty. Gen. 98-00065 (Dec. 31, 1997). However, the sheriff must determine whether personal information such as the social security number, home address, place of employment and telephone number of the applicant is subject to disclosure or should be redacted. 99-00032 (Oct. 30, 1998).
3. Radio Logs: Police department radio logs need not be disclosed for public scrutiny. Ala. Op. Atty. Gen. 96-00128 (Feb. 8, 1996).

4. Bingo Licenses and Permits: Applications for bingo permits and annual financial statements filed with the sheriff of Jefferson County are public records subject to public disclosure. Ala. Op. Atty. Gen. 97-00169 (Apr. 21, 1997).

6. **Burden of Proof:** A government official who refuses to permit access to a report resulting from a study paid for by state funds has the burden of proof to establish that report is within an exception to the general rule of public disclosure. Ala. Op. Atty. Gen. 99-00164 (Apr. 7, 1999).

D. Miscellaneous:

1. A traffic accident report is a public record. A city may charge a fee for a copy of the accident report. A citizen may inspect the report without obtaining a copy or paying a fee. Ala. Op. Atty. Gen. 79-00173 (Apr. 26, 1979).

2. Names and voting precincts of registered voters on file in the probate office are public record. ALA. CODE § 17-4-130 (1987).

3. Lists of electors voting in an election are not public records. *Advertiser Co. v. Hobbie*, 474 So. 2d 93 (Ala. 1985).

4. Documents maintained in the county tax assessor's offices are public records. ALA. CODE §§ 40-7-38, -44 (1985)

5. In a public contract, all original bids and all documents related to awarding the contract are public records. ALA. CODE §§ 41-16-54(b) & 57 (1988).

6. A list of insurance companies doing business with a municipality. Ala. Op. Atty. Gen. 2000-077 (Feb. 7, 2000)

7. Contracts let by a municipal utility are public records. Ala. Op. Atty. Gen. 97-00254 (Aug. 11, 1997)

8. Billing and collection records of a water and sewer board are public records. However, customer home addresses, telephone numbers, social security numbers and closest living relative information is not subject to public disclosure. Ala. Op. Atty. Gen. 98-00019 (Oct. 27, 1997).

E. Attorney's Fees: Ever since *Bell v. Birmingham News Co.*, 576 So. 2d 669, 670-71 (Ala. Civ. App. 1991), the Alabama Civil Court of Appeals has recognized the ability for successful defenders of the Sunshine Law to be reimbursed their attorney's fees by the offending governmental entity. However, the Alabama Supreme Court had not spoken on the subject until *Slawson & Furman v. Alabama Forestry Commission*, 631

So. 2d 953 (Ala. 1994). In that case Justice Shores, speaking for a unanimous court, stated "The award of attorney fees may be appropriate in an action based on § 13A-14-2."

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